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Before the  
UNITED STATES COPYRIGHT ROYALTY BOARD  
Library of Congress  
Washington, D.C.

ORIGINAL

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In Re: : Docket No.  
: 15-CRB-0001-WR  
Determination of Royalty : (2016-2020)  
Rates and Terms for : Volume 26-PUBLIC  
Ephemeral Recording and : Pages 7121-7153  
Digital Performance of : Pages 7185-7192  
Sound Recordings (Web IV) : Pages 7232-7244  
-----:

PUBLIC SESSION

Washington, D.C.

Tuesday, June 2, 2015

The hearing in the above-entitled matter  
was convened at 9:15 a.m.

BEFORE COPYRIGHT ROYALTY JUDGES:

SUZANNE M. BARNETT, CHIEF JUDGE

DAVID R. STRICKLER, JUDGE

JESSE FEDER, JUDGE

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John Thorne, Scott Angstreich, Caitlin Hall and  
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Michael Sturm, Christopher Mills, Suzanne Head

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Cynthia Greer

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Capital Reporting Company  
Day 26 In Re: Determination of Royalty Rates (Public) 06-02-2015

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1 P R O C E E D I N G S

2

3 (PUBLIC SESSION)

4

5 CHIEF JUDGE BARNETT: Good morning.

6 Please be seated.

7 You have been here before, have you

8 not?

9 THE WITNESS: I have.

10 CHIEF JUDGE BARNETT: You remain under

11 oath. You may be seated.

12 JONATHAN BENDER,

13 having been previously duly sworn, to tell the

14 truth, the whole truth and nothing but the truth,

15 testified as follows:

16 CHIEF JUDGE BARNETT: Ms. LeMoine and

17 Ms. Pope were going to resolve something but they

18 are not here this morning.

19 MR. ANGSTREICH: Ms. LeMoine sent an

20 e-mail to either the group or to you as well saying

21 that she couldn't be here today and asked you to do

22 it tomorrow morning.

23 CHIEF JUDGE BARNETT: That will be

24 fine.

25 MR. JOSEPH: Your Honor, I was going to

1 wait on this and I am certainly willing to do it at  
2 Your Honor's pleasure, but there was some witness  
3 testimony and exhibits that we agreed to offer. I  
4 can do it, I can do it later. I know we have a  
5 witness on the stand.

6 CHIEF JUDGE BARNETT: Why don't we do  
7 it between witnesses.

8 MR. JOSEPH: Thank you, Your Honor.

9 CHIEF JUDGE BARNETT: Thank you.

10 Mr. Choudhury.

11 DIRECT EXAMINATION BY COUNSEL FOR SOUNDEXCHANGE

12 BY MR. CHOUDHURY:

13 Q. Good morning, Mr. Bender. Welcome  
14 back.

15 A. Thank you.

16 Q. I know you were here a few weeks ago  
17 with your direct testimony. I take it you also  
18 submitted rebuttal testimony in this proceeding?

19 A. I did.

20 Q. Can you turn to Tab 1 of your binder.  
21 What is this document?

22 A. This is my rebuttal testimony.

23 Q. Is the information in your written  
24 testimony true and correct?

25 A. It is.

1 MR. CHOUDHURY: Your Honor, at this  
2 time we'd move for admission of SX 23.

3 CHIEF JUDGE BARNETT: Hearing no  
4 objection, 23 is admitted.

5 (SoundExchange Exhibit 23 was admitted  
6 into evidence.)

7 BY MR. CHOUDHURY:

8 Q. Could I also ask you to turn to Tab 2  
9 of your binder.

10 MR. CHOUDHURY: It is 23.

11 CHIEF JUDGE BARNETT: I thought that is  
12 what you said. I looked at it, oddly enough.

13 BY MR. CHOUDHURY:

14 Q. If you could turn to Tab 2.

15 A. Yes.

16 Q. What is this document?

17 A. These are the reply comments of  
18 SoundExchange.

19 Q. And did you have input into the  
20 creation of these comments?

21 A. I did.

22 Q. Are these the same comments you refer  
23 to in your written rebuttal testimony?

24 A. They are.

25 Q. And these are comments you reviewed in

1 putting together your testimony?

2 A. Yes.

3 MR. CHOUDHURY: Your Honor, we'd move  
4 introduce into evidence SX 125.

5 MR. MILLS: Objection. Hearsay.

6 MR. ANGSTREICH: Same objection.

7 CHIEF JUDGE BARNETT: Thank you for not  
8 me tooing.

9 MR. MILLS: Can I expand, Your Honor?

10 CHIEF JUDGE BARNETT: You may.

11 MR. MILLS: It's a 96-page document for  
12 legal argument that has been entered into the  
13 notice of record another proceeding that is before  
14 the judges in that proceeding.

15 CHIEF JUDGE BARNETT: Yes, it is. And  
16 we can take official notice and we will do that  
17 rather than admitting it into this proceeding.  
18 Unless there is particular reason you think it  
19 needs to be a part of this record in this  
20 proceeding.

21 MR. CHOUDHURY: No, Your Honor, that is  
22 fine by us.

23 Mr. Nichols, if you could put up the  
24 slide please.

25 BY MR. CHOUDHURY:

1 Q. Mr. Bender, if you could take a look at  
2 the slide, are these the term's proposals discussed  
3 in your rebuttal testimony?

4 A. Yes.

5 Q. Mr. Bender, we're going to go through  
6 every single one of these this morning, right?

7 A. No thank you.

8 Q. So we are just going to focus on a  
9 couple, right?

10 A. Yes.

11 Q. If I could ask you to -- first, let's  
12 talk about the statement of accounts corrections  
13 and overpayments.

14 Now Pandora has proposed that the  
15 services should be allowed to make good-faith  
16 revisions to statements of accounts.

17 A. Yes.

18 Q. Do you agree with that proposal?

19 A. No.

20 Q. And who is responsible for the accuracy  
21 of a statement of account in the first instance?

22 A. The services themselves.

23 Q. So now I want you to imagine that a  
24 service submits a statement of account and many  
25 months later, adjusts the statement to reduce the

1 amount it owes.

2 How would this downward adjustment  
3 affect SoundExchange's operations?

4 A. This presents a real operational burden  
5 and a lot of complexity. The first thing you do is  
6 you have to go back to the period in question and  
7 in effect undistribute that log. We have to roll  
8 back all of the payments, all the transactions,  
9 hundreds of thousands of lines and logs and then  
10 recalculate based on the new number and then come  
11 up with a net difference, which we have to report  
12 to all of our 25,000 pays.

13 Q. When you report to pays, how do you go  
14 about doing that?

15 A. We create debits in their account which  
16 will appear in their next royalty statement.

17 Q. How do the debits work to claw back  
18 royalty?

19 A. So if you have a debit in your account,  
20 as a new income stream from royalties comes in, we  
21 will take the debit from that new royalty stream.

22 Q. And do you have to notify the payees of  
23 this?

24 A. It's in their royalty statement. They  
25 will see it but we will get a lot of calls.

1 Q. And when you get those calls, what  
2 kinds of issues do you have to deal with with the  
3 payees?

4 A. For artists in particular, you run into  
5 tax issues, depending on the timing of the  
6 restatement, they may have to readjust their taxes,  
7 refile their tax returns. Similarly, a lot of  
8 artists have agreements with producers who produce  
9 their records who share in their royalty stream.  
10 If the royalty stream changes, they have to go back  
11 to the producers and readjust the payment to the  
12 producers.

13 Q. Those are issues that SoundExchange has  
14 to then deal with when it notifies the payees?

15 A. Absolutely.

16 Q. If a deduction is assessed on an  
17 artist's royalty statement, is that always  
18 recovered?

19 A. No, it's not. In fact, experience  
20 shows that there is -- often, you know, they won't  
21 be able to recover all of the debit.

22 Q. What happens if the debit isn't  
23 recovered?

24 A. This creates unrecoverable debt on --  
25 unrecoverable debt on our books which we attempt to

1 recover over time but after a certain period, we  
2 take it against our administration fee.

3 Q. And who was the administration fee --

4 MR. ANGSTREICH: If I can object to  
5 that last -- I have been searching, as Mr.  
6 Choudhury has been going through, I just can't find  
7 any of this in Mr. Bender's rebuttal testimony.  
8 There's references -- there is a paragraph on this  
9 proposal, but I don't see the treatise we have just  
10 gotten.

11 MR. CHOUDHURY: Your Honor, if you look  
12 on Page 5, and I will point you to -- four lines up  
13 from the bottom, I think he's just explaining where  
14 he says the statements of account, these  
15 corrections are disruptive of the orderly and  
16 efficient flow of royalties.

17 MR. ANGSTREICH: That is a lot packed  
18 into six words, what we just heard from Mr. Bender.

19 CHIEF JUDGE BARNETT: It is, but I  
20 think it is of assistance to the judges to  
21 understand what those words entail. Please unpack,  
22 if you will.

23 BY MR. CHOUDHURY:

24 Q. So Mr. Bender, who is the  
25 administrative fee assessed against?

1           A.       All of our payees share equally, so in  
2 this case, the debit of an individual artist would  
3 be spread out, I guess, unfairly across everybody.

4           Q.       Now let's say there is a downward  
5 correction because the services overpaid or claims  
6 to have overpaid. Do you think SoundExchange  
7 should make an interest payment back to the service  
8 for the overpayment amount?

9           A.       No. That's actually a little crazy, we  
10 have already paid out the money. That money is  
11 gone. I don't know where we would earn the  
12 interest.

13          Q.       Mr. Bender, how frequently do you  
14 receive these downward adjustment requests from  
15 services?

16          A.       Pretty infrequently. We haven't  
17 allowed them beyond a 90-day window.

18          Q.       Can you think of any recent examples?

19          A.       We actually did have a recent example  
20 with a large Webcaster as asserted.

21          Q.       Mr. Bender, I should tell you, we are  
22 in open session so, you know, if we want to talk  
23 about any specifics, we need to go in closed  
24 session, maybe we can get back to that at the end  
25 if we need to.

1 A. That's fine.

2 Q. Let's move on to Pandora's proposal  
3 about the late fee.

4 A. Yes.

5 Q. Pandora proposes to have only one late  
6 fee applied to both the statement of accounts and  
7 the royalty payment. Are you aware of that  
8 proposal?

9 A. Yes.

10 Q. Do you agree with that proposal?

11 A. No, I don't.

12 Q. In your testimony, you say that royalty  
13 payments and statements of accounts serve different  
14 functions.

15 A. That's right.

16 Q. What do you mean by that?

17 A. Well, the statement of accounts is the  
18 service's self-reporting calculation of what the  
19 royalty liability is for a given broadcast period,  
20 whereas the payment is simply a transfer of funds  
21 from their bank to our bank.

22 Q. So let's just take this one step at a  
23 time. Let's say you have a service that's going to  
24 be late on their royalty payment.

25 A. Yes.

1 Q. Is there any value to SoundExchange to  
2 getting the statement of account in that instance  
3 before the royalty payment?

4 A. Absolutely. There is knowing that the  
5 service has acknowledged a royalty liability for  
6 the broadcast period is a great help to us because  
7 then our operationally, one, we have a liability on  
8 the books, a receivable, and when we go to enforce  
9 the collection, we are able to go to the services,  
10 you filed this statement of account for this  
11 amount, can you tell us when this payment will be  
12 forthcoming.

13 Q. Do you think if Pandora's proposal is  
14 adopted that you will be receiving in that instance  
15 the statements of accounts that trail the royalty  
16 rate?

17 MR. ANGSTREICH: Objection, Your Honor,  
18 calls for speculation on the part of the witness.

19 CHIEF JUDGE BARNETT: Sustained.

20 BY MR. CHOUDHURY:

21 Q. Now let's talk about the other  
22 instance. Say you have a service that is going to  
23 be late on its royalty payments, would there be --  
24 or I think that may have been the one I just did.

25 Let me ask about the other. Let's say

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1 that you have a statement that is going to be late  
2 on their statement of -- a service that's going to  
3 be late on their statement of account. Is there a  
4 benefit to you in receiving the royalty payment  
5 before that?

6 A. Absolutely. It is good to have the  
7 payment and similarly, it lets us know that the  
8 service acknowledges a royalty obligation for that  
9 royalty period, and again, that is, you know, we go  
10 back to the service and say we received your  
11 payment, when can we get the calculation and the  
12 statement of account.

13 Q. Now, what role does the late fee  
14 provision play in SoundExchange's operations?

15 A. It is crucial. It's the only tool that  
16 we have to ensure that services pay on a timely  
17 basis.

18 Q. Do you have any operation staff you  
19 dedicate to late fee issues?

20 A. Yes, we have a licensed relations group  
21 that their sole function is to work with  
22 licensees --

23 MR. ANGSTREICH: Again, Your Honor,  
24 move to strike again. This is not in the  
25 testimony.

1 CHIEF JUDGE BARNETT: Sustained.

2 BY MR. CHOUDHURY:

3 Q. Let me ask you one more question, Mr.

4 Bender: If the late fee provision was weakened,  
5 how would that affect SoundExchange's operations?

6 A. We would get a lot more late payments  
7 and late statements and the net result is artists  
8 would get paid later and later.

9 MR. CHOUDHURY: That's all my  
10 questions.

11 CHIEF JUDGE BARNETT: Thank you,  
12 Mr. Choudhury.

13 CROSS-EXAMINATION BY COUNSEL FOR IHEARTMEDIA

14 BY MR. ANGSTREICH:

15 Q. Good morning, Mr. Bender.

16 A. Good morning.

17 Q. So you testified that SoundExchange  
18 incurs administrative costs when payments or the  
19 statement of accounts are submitted late; isn't  
20 that right?

21 A. That's right.

22 Q. But your rebuttal testimony doesn't  
23 include any quantification of those costs, does it?

24 A. No.

25 Q. And your rebuttal testimony doesn't

1 include any analysis that compares the  
2 administrative costs you contend SoundExchange  
3 incurs with the amount SoundExchange recovers under  
4 the 1.5 percent late fee, does it?

5 A. Except there's extra staff to deal with  
6 this.

7 Q. But your testimony doesn't attempt to  
8 compare the collections under the late fee with the  
9 costs SoundExchange incurs, does it?

10 A. We analyze each transaction and assign  
11 a cost to each transaction that we get.

12 Q. There are no numbers in your testimony  
13 that say, we incur --

14 A. That's right.

15 Q. -- this much in costs and we recover  
16 this much in late fees. It's not in there, is it?

17 A. Not on a transaction basis, no.

18 Q. Not on any basis.

19 A. \$30 million is our administrative fee.

20 Q. But you also testified that -- you are  
21 aware that iHeartMedia has proposed using the tax  
22 underpayment penalty in place of the 1.5 percent  
23 late payment fee, correct?

24 A. Yes, I am aware of that.

25 Q. You testified that that penalty which

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1 the IRS uses doesn't create sufficient incentive to  
2 meaningful encourage timely submission of payments  
3 and statements of accounts, don't you?

4 A. That's correct.

5 Q. But your rebuttal testimony doesn't  
6 include any analysis of the incentives that either  
7 of these late fees propose or create, does it?

8 A. Incentives -- I mean, the IRS has other  
9 tools, we do not.

10 Q. You testified that it doesn't  
11 meaningful encourage, correct?

12 A. Say it again.

13 Q. Your testimony is that the tax  
14 underpayment penalty would not meaningfully -- or  
15 create sufficient incentive to meaningfully  
16 encourage timely submission of payments, does it?

17 A. That's right, yes.

18 Q. But you have done no analysis to  
19 quantify the level of incentive that that would  
20 create as compared to the 1.5 percent late fee,  
21 have you?

22 A. It's much lower.

23 Q. Okay. You testified also that 30 days  
24 would give the services more than enough time to  
25 submit accurate accounting statements, don't you?

1 A. Yes.

2 Q. But again, your rebuttal testimony does  
3 not identify any of the steps that a service has to  
4 undertake in order to create that statement, does  
5 it?

6 A. No, I didn't lay it out.

7 Q. Your rebuttal testimony doesn't  
8 quantify how long any of those steps take, does it?

9 MR. CHOUDHURY: Objection, Your Honor.  
10 This is actually about his direct testimony.  
11 That's where he makes the 30-day proposal. This is  
12 beyond the scope.

13 BY MR. ANGSTREICH:

14 Q. If you could look, Mr. Bender, at Page  
15 6 of your written rebuttal testimony.

16 A. Yes.

17 Q. And on Page 6 of your written rebuttal  
18 testimony, don't you say that 30 days would give  
19 the services more than enough time to submit  
20 accurate accounting statements?

21 A. Yes.

22 MR. CHOUDHURY: Your Honor.

23 CHIEF JUDGE BARNETT: In my direct  
24 testimony, I explain that a 30 day -- okay, so we  
25 are past.

1 MR. ANGSTREICH: He is responding --  
2 but he is rebutting our proposal which he didn't  
3 have at the time of his direct statement to keep it  
4 at 45 days.

5 CHIEF JUDGE BARNETT: You can ask  
6 questions about what is wrong with 45, but he's  
7 already explained the 30.

8 MR. ANGSTREICH: Okay.

9 BY MR. ANGSTREICH:

10 Q. Mr. Bender, you understand that  
11 SoundExchange's proposal is that if a licensee  
12 underpays, a 1.5 percent late fee should apply,  
13 right?

14 A. That's correct.

15 Q. And you understand further that under  
16 SoundExchange's proposal, if the licensee makes a  
17 mistake and overpays, the labels and artists get to  
18 keep that unearned money; isn't that right?

19 A. That's correct.

20 Q. That's true even if the licensee  
21 notifies SoundExchange the next month of the  
22 mistake; isn't that right?

23 A. That's correct.

24 Q. Isn't it true, Mr. Bender, that  
25 SoundExchange has a process for adjusting

1 particular accounts to rectify reporting and other  
2 errors that occurred in prior distributions?

3 A. On a track-by-track basis, yes.

4 Q. So if SoundExchange makes a mistakes  
5 and distributes too much money to a particular  
6 copyright owner in a month, it will fix that by  
7 reducing payments to that copyright owner in the  
8 future, won't it?

9 A. On a track-by-track basis.

10 Q. But if a service makes a mistake, the  
11 artists just keep the money?

12 A. Yes. Well, that is on a log. That is  
13 hundreds of thousands of records versus an  
14 individual record.

15 MR. ANGSTREICH: Thank you, Mr. Bender.

16 MR. LARSON: No questions here.

17 CROSS-EXAMINATION BY COUNSEL FOR NAB

18 BY MR. MILLS:

19 Q. Welcome back, Mr. Bender.

20 A. Thank you.

21 Q. In your rebuttal testimony, you have  
22 commented on many of these proposed changes to the  
23 definition of performance; is that right?

24 Is that better?

25 A. Thank you, yes.

1 Q. In your rebuttal testimony, you have  
2 commented on NAB's proposed changes to the  
3 definition of performance; is that correct?

4 A. Yes.

5 Q. And one of NAB's proposed changes is to  
6 exclude performances of 15 seconds or less in  
7 duration, correct?

8 A. That's right.

9 Q. And in opposing this exclusion in your  
10 testimony, you assert that services shouldn't allow  
11 listeners to skip songs which would cut down on the  
12 service's financial obligations for sole  
13 performances, correct?

14 A. That's right.

15 Q. But listeners cannot skip songs on a  
16 simulcast over the air broadcast, can they?

17 A. That's correct.

18 Q. You also comment on NAB's other  
19 proposed exclusion from the definition of  
20 performance, which is an exclusion for second  
21 connections to the same sound recordings from  
22 someone from the same IP address, correct?

23 A. That's right.

24 Q. As part of your discussion of the  
25 issue, you address the written direct testimony of

1 Mr. Gadhoury?

2 A. Yes.

3 Q. And in his testimony, Mr. Gadhoury  
4 identified some technical issues that could be  
5 encountered in counting streaming performances  
6 which might result in a performance being counted  
7 twice, correct?

8 A. Yes.

9 Q. Your testimony does not assert that the  
10 technical issues cited by Mr. Gadhoury are  
11 implausible, correct?

12 A. No. But the same IP address fails to  
13 acknowledge that my company has a single IP  
14 address, so all of my staff who are listening to  
15 Pandora at any given time would be on the same IP  
16 address.

17 Q. But just to be clear, you are not  
18 asserting that the technical issues that Mr.  
19 Gadhoury raised are implausible, correct?

20 A. I would say rare, if not implausible.

21 Q. And you stated in your testimony that  
22 in your view, quote: "Any reconnection made by the  
23 same listener's device due to a technical glitch  
24 would not be a second performance under the  
25 regulations," correct?

1 A. Can you direct me to the line.

2 Q. Sure. On Page 13 of your testimony,  
3 the fourth line down, you state: "Accordingly, any  
4 reconnection made by the same listener's device due  
5 to a technical glitch could not be a second  
6 performance under the current regulation," correct?

7 A. Yeah.

8 Q. I just asked if you said it, Mr.  
9 Bender.

10 A. Yes, that's right.

11 Q. Thank you.

12 MR. MILLS: No further questions.

13 CHIEF JUDGE BARNETT: Any other  
14 questions? Judges? Redirect?

15 MR. CHOUDHURY: No redirect.

16 CHIEF JUDGE BARNETT: Thank you, Mr.  
17 Bender. You are excused.

18 THE WITNESS: Thank you very much.

19 (Witness excused.)

20 MR. POMERANTZ: Your Honor, our next  
21 witness is Mr. Van Arman.

22 CHIEF JUDGE BARNETT: Good morning,  
23 Mr. Van Arman. You remain under oath.

24 DARIUS VAN ARMAN, having been  
25 previously duly sworn, to tell the truth, the whole

1 truth, and nothing but the truth, testified as  
2 follows:

3 MR. CHOUDHURY: Your Honor, we are  
4 happy to start, but I didn't know if you wanted to  
5 do the exhibits first.

6 CHIEF JUDGE BARNETT: Mr. Joseph, did  
7 you want to deal with some exhibits at this time?

8 MR. JOSEPH: I'm happy to, Your Honor.  
9 I am trying to catch attention while we were  
10 transitioning, but -- while I am up, Your Honor,  
11 and I would offer the written direct testimony of  
12 Julie Koehn, K-O-E-H-N, that's NAB Exhibit 4006,  
13 the attachments to that testimony is NAB Exhibits  
14 4124 and 4125. The written direct testimony of  
15 Johnny Chiang, C-H-I-A-N-G, that's NAB 4004. The  
16 attachments to that testimony are NAB Exhibits 4126  
17 and 4127, and the written direct testimony of  
18 Jean-Francis Gadhouri, G-A-D-H-O-U-R-Y, that's NAB  
19 Exhibit 4007.

20 MR. POMERANTZ: No objection, Your  
21 Honor.

22 CHIEF JUDGE BARNETT: Those exhibits  
23 are admitted. Thank you.

24 (NAB Exhibit 4006 was admitted into  
25 evidence.)

1 (NAB Exhibits 4124 and 4125 were  
2 admitted into evidence.)

3 (NAB Exhibit 4004 was admitted into  
4 evidence.)

5 (NAB Exhibits 4126 and 4127 were  
6 admitted into evidence.)

7 (NAB Exhibit 4007 was admitted into  
8 evidence.)

9 MR. JOSEPH: Thank you, Your Honor, and  
10 while I have the Courts here, I might as well press  
11 my luck. Pursuant to the agreement of the parties,  
12 I'm now wearing my NRBNMLC hat rather than my NAB  
13 hat, I would offer the written direct testimony of  
14 Joseph Emert, that's NAB -- that's E-M-E-R-T,  
15 that's NAB -- NRBNMLC Exhibit 7000 and the  
16 attachments Exhibit 7001, 2, 3, 4, 5, 6, 7, 8, 9  
17 and 10, along with NRBNMLC Exhibits 7025 and 7026  
18 pursuant to the agreement of the parties.

19 MR. POMERANTZ: No objection, Your  
20 Honor.

21 CHIEF JUDGE BARNETT: Those exhibits  
22 are admitted on behalf of NRBNMLC.

23 (NRBNMLC Exhibits 7000 to 7010 were  
24 admitted into evidence.)

25 (NRBNMLC Exhibits 7025 and 7026 were

1 admitted into evidence.)

2 CHIEF JUSTICE BARNETT: Mr. Choudhury?

3 DIRECT EXAMINATION BY COUNSEL FOR SOUNDEXCHANGE

4 BY MR. CHOUDHURY:

5 Q. Mr. Van Arman, welcome back. It is  
6 like a reunion in this place.

7 You were previously here in the direct  
8 phase. Did you also prepare rebuttal testimony?

9 A. Yes, I did.

10 Q. If you can turn to Tab 2 in your  
11 binder.

12 Is this your written rebuttal  
13 testimony?

14 A. It is.

15 Q. Is the information in your written  
16 rebuttal testimony true and correct?

17 A. Yes.

18 MR. CHOUDHURY: Your Honor, we'd move  
19 for the admission of SX 30.

20 MR. YOLKUT: No objection, Your Honor.

21 CHIEF JUDGE BARNETT: 30 is admitted.

22 (SoundExchange Exhibit 30 was admitted  
23 into evidence.)

24 BY MR. CHOUDHURY:

25 Q. Mr. Van Arman, what is the subject of

1 your written rebuttal testimony?

2 A. This rebuttal testimony is in response  
3 to the previous testimony in this rate proceeding  
4 and specifically addresses the Pandora-Merlin  
5 agreement.

6 Q. Let me ask you: How do you know about  
7 the Pandora-Merlin license?

8 A. My companies received an opt-in notice  
9 from Merlin outlining the deal terms and as an  
10 observer on the Merlin board, I was part of higher  
11 level discussions about the Pandora-Merlin  
12 agreement.

13 MR. CHOUDHURY: Mr. Nichols, if you  
14 could put up the slide.

15 BY MR. CHOUDHURY:

16 Q. Mr. Van Arman, if you could take a look  
17 at the slide. Is this an accurate summary at a  
18 high level of the points discussed in your written  
19 testimony?

20 A. Yes.

21 Q. So let's discuss. Mr. Van Arman, if  
22 you did not opt in to the Pandora-Merlin license,  
23 would Pandora have access to your label's  
24 repertoire?

25 A. Yes, they would.

1 Q. How would may have such access?

2 A. They would be able to use the statutory  
3 license to use our repertoire.

4 Q. So that statutory license, would that  
5 set the rates and terms for your relationship  
6 absent a deal?

7 A. Yes, they would be paying the statutory  
8 Pureplay rates.

9 Q. So when you opted in to the license,  
10 how did you intend to affect the relationship  
11 between your labels and Pandora?

12 A. It was -- from our perspective, it was  
13 going to be a modification to the statutory license  
14 that would otherwise prevail.

15 Q. And in the absence of a statutory  
16 license, would you have opted in to the  
17 Pandora-Merlin license?

18 A. No, we would not.

19 Q. So when you were here last time, you  
20 were asked about whether you would agree to a  
21 license that included play sharing.

22 Do you recall that?

23 A. I do.

24 Q. What was the example of the license you  
25 were referring to there?

1           A.       I was referring to the Pandora-Merlin  
2 agreement.

3           Q.       And what is the play-share incentive in  
4 that license?

5           A.       My understanding of the play-share  
6 incentive is that Pandora --

7           Q.       Hold on, Mr. Van Arman.

8                   MR. CHOUDHURY: If we're going to talk  
9 about the specifics of the license, we should go  
10 into restricted session.

11                   CHIEF JUDGE BARNETT: I think that is a  
12 good plan. Anyone in the courtroom who has not  
13 signed the nondisclosure certificate, please wait  
14 outside.

15                   MR. LARSON: If I could just ask: Is  
16 this just Merlin restricted? Or I mean, I guess,  
17 can one of our Pandora clients --

18                   MR. CHOUDHURY: I think your Pandora  
19 client can stay.

20                   MR. LARSON: Thank you.

21                   MR. CHOUDHURY: And I will wave the bat  
22 signal if that is not the case.

23                   (THIS ENDS PUBLIC SESSION)

24                   (RESTRICTED SESSION BOUND

25 SEPARATELY)

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1 (THIS BEGINS PUBLIC SESSION)

2 CHIEF JUDGE BARNETT: You remain under  
3 oath or affirmation. Please be seated.

4 AARON HARRISON,  
5 being first duly sworn, to tell the truth, the  
6 whole truth and nothing but the truth, testified as  
7 follows:

8 MR. HANSEN: Your Honor, Mr. Thorne was  
9 going to cross-examine Mr. Harrison. I can stand  
10 in for him. If you take the break sooner rather  
11 than later, that will be helpful for us.

12 MR. POMERANTZ: And I agree with Mr.  
13 Hansen that this has gone pretty fast, faster than  
14 we thought this morning. Good news for all of us.  
15 I think after Mr. Harrison, we only have Mr. Cutler  
16 left for today, and I -- last I spoke with Mr.  
17 Hansen about it, that he was going to be available  
18 this afternoon and not this morning, so I think we  
19 are probably in a very comfortable schedule for  
20 today. If that is correct.

21 MR. HANSEN: I think that is correct,  
22 Your Honor.

23 JUDGE STRICKLER: Who is up tomorrow?

24 MR. POMERANTZ: We only have two, Mr.  
25 Wilcox and Mr. Huppe.

1 CHIEF JUDGE BARNETT: We will take our  
2 recess. It's not fair. I'm certain you can do a  
3 stellar job, Mr. Hansen, but since Mr. Thorne is  
4 the one who specifically prepared, we will wait for  
5 him. We will take 15 minutes and decide what we  
6 will do.

7 MS. LEMOINE: Thank you, Your Honor.

8 (A short recess was taken.)

9 CHIEF JUDGE BARNETT: Please be seated.

10 MR. POMERANTZ: Your Honor, while we're  
11 going to get the witness, can I take care of a  
12 couple of housekeeping matters on our end?

13 CHIEF JUDGE BARNETT: Surely.

14 MR. POMERANTZ: We have agreed with all  
15 of the other parties to submit three of our  
16 witnesses in writing along with their -- with their  
17 written testimony along with their appended  
18 exhibits.

19 I'd like to offer those -- the  
20 testimony and appended exhibits into evidence now.

21 CHIEF JUDGE BARNETT: All right.

22 MR. POMERANTZ: We've cleared this with  
23 the other parties.

24 Those are the written testimony and  
25 appended exhibits of Mr. Foster, Ms. Roberts and

1 Professor Reisman.

2 And they would be the following  
3 exhibits: SoundExchange Exhibit 6, SoundExchange  
4 Exhibit 16, SoundExchange Exhibit 126,  
5 SoundExchange Exhibit 18. All the rest of these  
6 are SoundExchange exhibits: 164 through 172.

7 CHIEF JUDGE BARNETT: Thank you.

8 Hearing no objection, those exhibits  
9 will be admitted and that testimony submitted.

10 (SoundExchange Exhibit Nos. 6, 16, 126,  
11 18, 164-172 were admitted into evidence.)

12 MR. POMERANTZ: Thank you, Your Honor.

13 One other thing is I think Judge  
14 Strickler, a few days ago when Mr. Kooker was here,  
15 had asked for hard copies of some of the Sony  
16 agreements that were part of Exhibit 80.

17 JUDGE STRICKLER: That was in my  
18 conversations with Mr. Klaus.

19 MR. POMERANTZ: Yes.

20 JUDGE STRICKLER: Right.

21 MR. POMERANTZ: Yes. And we've cleared  
22 these with the other parties. They're fine with us  
23 submitting these. So I just wanted to hand these  
24 up to you.

25 JUDGE STRICKLER: Thank you very much.

1 MR. POMERANTZ: They've already been  
2 previously admitted into evidence.

3 CHIEF JUDGE BARNETT: Thank you.

4 MR. POMERANTZ: Your Honor, one other  
5 thing Mr. Joseph reminded me. We just admitted  
6 into evidence SoundExchange Exhibit 168. And I  
7 just wanted to note for the record that that same  
8 document was previously admitted as SoundExchange  
9 Exhibit 269.

10 CHIEF JUDGE BARNETT: In its entirety?  
11 They are exactly the same?

12 MR. POMERANTZ: Mr. Joseph and I both  
13 think so. And I'm told that they are.

14 CHIEF JUDGE BARNETT: Okay. Thank you.

15 MS. LEMOINE: I'm going to begin with  
16 Mr. Harrison and go very quickly into restricted  
17 session. So perhaps we should just close the  
18 courtroom.

19 CHIEF JUDGE BARNETT: Well, try having  
20 to do what you can with the room open, Ms. LeMoine.

21 MS. LEMOINE: Sure. Of course.

22 CHIEF JUDGE BARNETT: I think we're  
23 ready now.

24 MS. LEMOINE: All right.

25 DIRECT EXAMINATION BY COUNSEL FOR SOUNDEXCHANGE

1 BY MS. LEMOINE:

2 Q. Good morning, Mr. Harrison.

3 A. Good morning.

4 Q. Mr. Harrison, you've already testified  
5 in the direct phase of this proceeding; is that  
6 right?

7 A. Yes.

8 Q. Can you please remind the judges of  
9 what you do at Universal Music Group?

10 A. Yes. I'm senior president of business  
11 and legal affairs at Universal. And I focus on  
12 negotiating deals with the digital music services  
13 for the use of our entire catalog.

14 Q. And if you could open your binder to  
15 your Tabs 1 through 7 in there.

16 Is that your written rebuttal testimony  
17 and the exhibits that you attach to it?

18 A. Yes, it is.

19 MS. LEMOINE: Your Honor, at this time  
20 we'd move to admit those Tabs 1 through 7, which  
21 are SX Exhibits 25, 81 to 86 and then 88.

22 MR. THORNE: Objection on Exhibit 88,  
23 Your Honor. It's double or triple hearsay.

24 CHIEF JUDGE BARNETT: Ms. LeMoine, was  
25 this an exhibit to the written testimony or a

1 separate exhibit?

2 MS. LEMOINE: This was an exhibit to  
3 the written testimony.

4 And I just want to understand that a  
5 little better. Which portion --

6 MR. THORNE: Your Honor, SoundExchange  
7 Exhibit 88 appears to be something that someone  
8 told Mr. Harrison who was told by somebody else  
9 told by somebody else that came from iHeart.

10 And there's no indicia of reliability.  
11 I do not think there's any proof to the thing that  
12 Ms. LeMoine is trying to get in.

13 MS. LEMOINE: Your Honor, this is  
14 something that -- I guess that's true. It is  
15 hearsay because it's to the extent Universal is  
16 reporting what iHeart told Universal.

17 Is that your objection?

18 Yeah. Then I -- but Your Honor has  
19 discretion to consider hearsay in this proceeding  
20 to the extent you find it relevant and appropriate.

21 CHIEF JUDGE BARNETT: I think  
22 appropriate is the --

23 MS. LEMOINE: Is the key.

24 CHIEF JUDGE BARNETT: -- operative  
25 word. And how would you describe this as

1 appropriate, Ms. LeMoine?

2 MS. LEMOINE: Mr. Harrison offers it as  
3 part of his rebuttal testimony as an example of the  
4 back-and-forth that went on regarding the Clear  
5 Channel negotiations.

6 But -- so he offers it as an example of  
7 what Clear Channel had offered and what -- how  
8 Universal responded and particularly how the  
9 promotions department had raised issues about the  
10 deal.

11 MR. THORNE: Your Honor, Mr. Harrison  
12 didn't even hear anything from iHeart. His  
13 correspondent heard it from somebody else who heard  
14 it from somebody else.

15 His immediate correspondent says at the  
16 bottom: "I do not think there is any proof to it."

17 And it doesn't have the indicia of  
18 reliability that we would expect.

19 CHIEF JUDGE BARNETT: 88 is refused.  
20 And the remaining exhibits are admitted.

21 MS. LEMOINE: Thank you, Your Honor.

22 (SoundExchange Exhibit Nos. 25, 81-86  
23 were admitted into evidence.)

24 BY MS. LEMOINE:

25 Q. Mr. Harrison, have you had an

1 opportunity to review your testimony?

2 A. Yes.

3 Q. Do you have any corrections or updates  
4 to your testimony at this time?

5 A. The only update is that the Rhapsody  
6 Radio term sheet, which is Tab 2, has now been  
7 memorialized into an amendment which reflects the  
8 same terms but is just now an amendment to the  
9 overall subscription agreement.

10 MS. LEMOINE: So let's just discuss a  
11 few points you raise in your rebuttal testimony.

12 I think at this time I'm going to have  
13 to go to restricted.

14 CHIEF JUDGE BARNETT: Those of you in  
15 the hearing room who have not signed the  
16 nondisclosure certificate please wait outside.

17 (THIS ENDS PUBLIC SESSION)

18 (RESTRICTED SESSION BOUND SEPARATELY)

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Capital Reporting Company  
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1 (THIS BEGINS PUBLIC SESSION)

2 CHIEF JUDGE BARNETT: Good afternoon.

3 Please be seated, all except the witness.

4 STEVEN CUTLER,

5 being first duly sworn, to tell the truth, the

6 whole truth and nothing but the truth, testified as

7 follows:

8 DIRECT EXAMINATION BY COUNSEL FOR IHEARTMEDIA

9 BY MR. THORNE:

10 Q. Mr. Cutler, would you please state your  
11 name and spell your last name.

12 A. Sure. Steven Cutler, C-U-T-L-E-R.

13 Q. Is that Steven with a V?

14 A. Steven with a V.

15 MR. THORNE: Your Honors, this will be  
16 public at least until we get to the questions about  
17 details that are restricted.

18 CHIEF JUDGE BARNETT: Okay.

19 BY MR. THORNE:

20 Q. Mr. Cutler, what is your title?

21 A. My title is executive vice president,  
22 business development and corporate strategy at  
23 iHeartMedia.

24 Q. How long have you been in that  
25 position?

1 A. About three and a half years.

2 Q. What does your position involve?

3 A. So I essentially work on key topics for  
4 the CEO, so it can range from strategic  
5 transactions, sometimes working on cost  
6 initiatives, putting together materials for our  
7 board of directors or investors, but it can vary a  
8 little bit depending on how his priorities shift.

9 Q. Does that responsibility include  
10 helping control licensing costs?

11 A. Yes, it does.

12 Q. Is it important to control licensing  
13 costs?

14 A. For us, it is very important.

15 Q. Why is that?

16 A. Just -- as it stands right now, our  
17 digital business does not have a sustainable set of  
18 economics.

19 Q. Would you please --

20 MR. THORNE: Your Honors, you have in  
21 front of you a thickish binder. The good news is  
22 we're not going to go through very much of it.

23 JUDGE STRICKLER: Begging the question,  
24 why do we have it?

25 MR. THORNE: This is Mr. Cutler's

1 written testimony and all of the exhibits that were  
2 originally attached to it -- many of them have  
3 already been entered into evidence, so we're not  
4 going to move very much more in.

5 BY MR. THORNE:

6 Q. Mr. Cutler, would you look at the first  
7 tab which is iHeart Exhibit 3338.

8 A. Okay.

9 Q. Do you recognize that?

10 A. Yes. This is my testimony.

11 Q. Is that your signature on the back  
12 page?

13 A. Yes, it is.

14 Q. Is your testimony still correct?

15 A. Yes, it is.

16 MR. THORNE: We offer iHeart Exhibit  
17 3338.

18 MR. CHOUDHURY: No objection.

19 CHIEF JUDGE BARNETT: 3338 is admitted.

20 (iHeartMedia Exhibit 3338 was admitted  
21 into evidence.)

22 BY MR. THORNE:

23 Q. Mr. Cutler, would you look at briefly,  
24 just thumb through the other tabs in your binder.

25 Are those the other exhibits -- are

1 those exhibits things that were attached to your  
2 written testimony?

3 A. Yes. Let me just sort of flip through  
4 as you said, but yes.

5 MR. THORNE: Your Honors, as I  
6 mentioned, many of these have already been admitted  
7 into evidence. We would offer now Exhibits 3339,  
8 3341, 3346, 3348 and 3350.

9 MR. CHOUDHURY: No objection.

10 CHIEF JUDGE BARNETT: Those exhibits  
11 are admitted.

12 I'm sorry. I don't have 3346.

13 MR. THORNE: They are in the same order  
14 as they were attached to his testimony. 3346, for  
15 example, I think it is third from the last. It is  
16 Tab 31.

17 CHIEF JUDGE BARNETT: Thank you. Got  
18 it. Thank you.

19 MR. THORNE: Those exhibits are  
20 admitted, Your Honor?

21 CHIEF JUDGE BARNETT: Yes, they are.

22 (iHeartMedia Exhibit 3339 was admitted  
23 into evidence.)

24 (iHeartMedia Exhibit 3341 was admitted  
25 into evidence.)

1 (iHeartMedia Exhibit 3346 was admitted  
2 into evidence.)

3 (iHeartMedia Exhibit 3348 was admitted  
4 into evidence.)

5 (iHeartMedia Exhibit 3350 was admitted  
6 into evidence.)

7 BY MR. THORNE:

8 Q. Mr. Cutler, you stated in your written  
9 testimony that iHeart's primary strategy for  
10 reaching across music licensing is to pursue direct  
11 licenses with record labels.

12 Could you tell us a little bit about  
13 that?

14 A. Sure. It was, and continues to be a  
15 primary way that we are trying to make the  
16 economics suitable for this business, that we can  
17 essentially promote the business, grow the business  
18 and invest in the business.

19 Q. Have you attempted to negotiate direct  
20 licenses with some of the labels?

21 A. Yes, we have.

22 Q. Can you briefly describe who you  
23 negotiated with and where, if anyplace, you have  
24 been successful?

25 A. Sure. So our first deal that we signed

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1 with was an independent label, Big Machine Records,  
2 a pretty significant independent label, Taylor  
3 Swift, a number of other well-known artists on that  
4 label. We subsequently signed a deal with Glass  
5 Notes, also I think a pretty notable independent  
6 label, and we subsequently signed -- I want to say  
7 25 additional independent labels and we also signed  
8 a deal, a direct deal with Warner Music Group,  
9 which, you know, in our mind, was a tremendous  
10 success getting all of that done.

11 Q. Just for the judges' reference, could  
12 you look in the front pocket of your binder.

13 This is iHeart Exhibit 3034, one of the  
14 pages from Professor Fischel's testimony. This is  
15 already in evidence, but I thought this might be  
16 the quickest way to take a look at it.

17 Could you look at that list, Mr.  
18 Cutler, and tell me, are these the independent  
19 record label deals that you have?

20 A. Yes, that's correct.

21 Q. Were you personally involved in  
22 negotiating these independent record label deals?

23 A. I have a team but I was involved in  
24 every one of them.

25 Q. What about the Warner deal? Were you

1 involved in that?

2 A. Yes, I was.

3 Q. So what was the basic -- I don't want  
4 to oversimplify this, but what was the basic idea  
5 for these deals? Did you offer something that was  
6 attractive? Did they offer something to you that  
7 was attractive?

8 A. So the basic idea was, in exchange for  
9 relief on royalty payments, we agreed and  
10 ultimately did play these music labels tracks more  
11 digitally, and so they in return received, you  
12 know, greater amounts of promotion and because of  
13 the way the deals work, even though the rate may  
14 have been lower, the additional plays actually  
15 resulted in more money being paid to the labels.

16 So, you know, in our minds, it was a  
17 win-win. We were able to achieve lower royalty  
18 costs. The labels were able to get greater  
19 promotion for their artists while also making more  
20 money in the end.

21 JUDGE STRICKLER: Mr. Cutler, good  
22 afternoon. Question for you. By playing more at  
23 lower rates for these 27 record labels, did you  
24 therefore play other record labels less?

25 THE WITNESS: Well, you know, it is --

1 a question I think you are getting at is share  
2 versus overall volume.

3 JUDGE STRICKLER: I meant share, yes.

4 THE WITNESS: Certainly, the share has  
5 to -- its math has to add up to a hundred, so if  
6 someone goes from 20 to 30, the rest of the pool  
7 must -- those ten points must come from somewhere  
8 else, but the thing that we found was that is that  
9 after you are able to put enough of the catalog  
10 into this kind of economic framework, you feel good  
11 about promoting the entire service, so the whole of  
12 the entire service, the volume of the entire  
13 service goes up, so even folks who maybe didn't do  
14 a direct deal may actually be getting paid more as  
15 well, just because the entire service has gone up  
16 even if their share has gone down.

17 JUDGE STRICKLER: Why doesn't the  
18 entire service go up as a consequence of having  
19 these play share or steering arrangements?

20 THE WITNESS: It's a question of having  
21 enough of -- I want to say that between the  
22 independent labels and Warner, particularly after  
23 we did some of this boosting that I am talking  
24 about, you know, a big chunk of our plays were  
25 through this direct licensing economics, which

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1 essentially gives us the freedom to talk about the  
2 service on the air, promote the service on the air,  
3 knowing that such a large portion of the content  
4 has these kind of favorable economics whereas  
5 before, you know, if we had one deal with Big  
6 Machine, okay, that is a start, but that is two  
7 percent of your plays, so do you want to sing from  
8 the treetops about promoting your service if you  
9 only have two percent.

10 JUDGE STRICKLER: Are you saying you  
11 have enough money, more money left over in the  
12 budget to promote the service, because these  
13 agreements are win-wins, the labels get more money,  
14 you pay out less overall because you are paying out  
15 less to other labels, and therefore, there is money  
16 left over to promote and grow the entire service?

17 THE WITNESS: You know, it is an  
18 interesting way to think about it. I don't think  
19 about it exactly that way, but you are right.  
20 There is, you know, we have saved money and -- but  
21 we have so many radio stations and we talk about  
22 the service so much on air that we wouldn't really  
23 spend that savings to go market the service, but  
24 really, what it would help us do is understand,  
25 wait a minute, all of a sudden, the service now has

1 sustainable economics, we can feel good about  
2 marketing it, we can go out and promote it. We can  
3 have another music festival and tell the public  
4 about our service.

5 JUDGE STRICKLER: Have you received any  
6 responses or -- I'll leave it at that.

7 Have you received any responses from  
8 record labels that did not enter into these  
9 agreements, that have been disappointed by reduced  
10 share or expressed disappointment?

11 THE WITNESS: You know, I'm not -- I  
12 don't explicitly -- I have not received any mail  
13 from any music labels who have not done a deal with  
14 us saying they are horribly disappointed with  
15 iHeartMedia.

16 By the way, I should mention as a, you  
17 know, an aside to that, you know, we went and  
18 talked to really everyone so this wasn't meant to  
19 be an exclusionary exercise where, you know, we  
20 were going to say some people were not, you know,  
21 available to do it with.

22 JUDGE STRICKLER: Thank you.

23 BY MR. THORNE:

24 Q. Following up on Judge Strickler's  
25 question, an earlier witness told us that iHeart

1 attempted to reach a deal with Universal; is that  
2 correct?

3 A. Yes.

4 Q. And did that succeed or fail?

5 A. We did not reach an agreement with  
6 Universal.

7 MR. CHOUDHURY: Objection, Your Honor.  
8 There is nothing in the testimony about approaching  
9 Universal.

10 MR. THORNE: Just following up on Judge  
11 Strickler's question, but I'll withdraw the  
12 question.

13 CHIEF JUDGE BARNETT: Thank you.

14 BY MR. THORNE:

15 Q. Mr. Cutler, talk about the contracts  
16 for a second. I want to take it in two batches,  
17 the independents and the Warner contract. Do the  
18 independents --

19 CHIEF JUDGE BARNETT: Mr. Thorne, I am  
20 having difficulty hearing you. If you could put  
21 that more directly in front of you.

22 MR. THORNE: Is that better, Your  
23 Honor?

24 CHIEF JUDGE BARNETT: A little bit.  
25 And if you could speak up.

1 MR. THORNE: Will do.

2 BY MR. THORNE:

3 Q. Do the independent contracts require  
4 iHeart to play their music more?

5 A. None of the contracts actually require  
6 us to play the content more. The contracts are  
7 actually designed so that we are economically  
8 incentivized to play the tracks more.

9 Q. What about the Warner contract? Does  
10 that require you to play Warner music more?

11 A. That one also does not require it, but  
12 what it does is, it says that we will pay up to a  
13 certain boosted level on one part of the service,  
14 so not to -- sorry, if it is too much detail, it  
15 doesn't require us to play, but it requires us to  
16 pay, which creates that incentive that I was  
17 mentioning to -- actually, if you are going pay for  
18 it, you should be playing it.

19 Q. And the Warner contract, does that  
20 require you to play -- sorry, I just asked that  
21 question. Good. I'll move on.

22 How much more do you expect to play the  
23 independents and Warner music?

24 A. So our target was to boost the share of  
25 these partners' plays by 50 percent.

1 Q. That is both Warner and the  
2 independents?

3 A. Correct.

4 Q. Does that cover your simulcast service  
5 only or your custom service only or both?

6 A. It's both.

7 Q. So is the Warner share boost that you  
8 were expecting exactly 50 percent?

9 A. It is a -- Warner is a little bit more.  
10 What we put in the contract is that we would pay on  
11 one side of the deal for a share of 31 and a half  
12 percent recognizing that they were starting at 20.

13 MR. CHOUDHURY: Your Honor, we are  
14 getting into confidential terms including Warner  
15 terms. I don't think this should be done in open  
16 session.

17 MR. THORNE: We should probably close  
18 the courtroom for this.

19 CHIEF JUDGE BARNETT: We are going to  
20 close the hearing room for this session, for this  
21 portion of the testimony.

22 (THIS ENDS PUBLIC SESSION)

23 (RESTRICTED SESSION BOUND SEPARATELY)

24

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1 CERTIFICATE OF COURT REPORTER

2

3 I, Bonnie L. Russo, do hereby certify that the  
4 foregoing transcript is a true record of the  
5 proceedings to the best of my ability, that I am  
6 not related to or employed by any of the parties  
7 involved in these proceedings, and, further, that I  
8 am not a relative or employee of any attorney or  
9 counsel employed by the parties hereto, or  
10 financially interested in the proceedings.

11

12 *Bonnie L. Russo*

13

Notary Public

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15 My Commission Expires:

16 May 16, 2016

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